



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0105]

RIN 1625-AA87

Security Zone; Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Seattle Seafair Fleet Week Moving Vessel Security Zone regulation. In response to public comment, we are not finalizing our proposal to remove existing language about a published notice identifying the designated participating vessels. However, last minute changes to the participating vessels in the Parade of Ships during Fleet Week may cause the published notice to become outdated after publication. In that case the Coast Guard will use actual notice to enforce a security zone around participating vessels, as well as other methods of informing the public about changes, and we have amended the regulation to reflect the possibility of changes.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0105 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206-217-6051, email

SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 10, 2012 (77 FR 40521), the Coast Guard Captain of the Port, Sector Puget Sound, published a final rule that became effective Aug. 1, 2012; the Seattle’s Seafair Fleet Week Moving Vessels security zone. On April 6, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Security Zone; Seattle’s Seafair Fleet Week Moving Vessels, Puget Sound, WA (83 FR 14801) in which we proposed to amend the current final rule. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended May 21, 2018, we received three written submissions.

III. Legal Authority and Need for Rule

The Coast Guard is amending its Seattle Seafair Fleet Week Moving Vessel Security Zone regulation, 33 CFR 165.1333, under authority in 33 U.S.C. 1231. In past years, some of the designated participating vessels which required the security zone have been rescheduled at the last moment due to operational needs, and as a result, the changes precluded the Coast Guard from providing sufficient notice of which vessels are participating in the parade of ships in the **Federal Register**. The amended regulation will allow the Coast Guard to publish dates and times of the Parade of Ships in the **Federal Register** and Local Notice to Mariners, and of the designated participating vessels it is aware of at the time it issues the notice, and provide that actual notice will be used to enforce the security zone around any vessels designated after the notice has been issued. Further, for the reasons discussed above, the amended regulation will require that the Coast Guard publish the above information before the beginning of the Parade of Ships instead of the three days currently provided for in the regulation. The names of the designated vessels will also be published in a Broadcast Notice to Mariners.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received three written submissions on our NPRM published April 6, 2018. The first commenter requested to stop the Russian and Chinese fishing ships from fishing within the U.S. Exclusive Economic Zone. As this comment does not relate to this rulemaking, no response is required. The second commenter requested the Agency stop wasting water from several of the Snake River hydroelectric dams that provide power and water for the navigation of vessel traffic for the region. This comment also does not relate the subject matter of this rulemaking and no response is required.

The third commenter provided a number of different concerns, each of which we address in turn as follows.

First, the commenter provided that the Thirteenth Coast Guard District failed to contact “interested community groups” as recommended by the Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, prior to implementation of exclusion zones. As noted by the commenter, the Coast Guard published a notice of proposed rulemaking in the **Federal Register**, providing notice of a proposed change of the notice of an annual security zone.

Second, the commenter provided that the Parade of Ships fails to comply with 33 CFR 100.15, which details the procedures for submission of a marine event permit, and that the event had never been conducted in a lawful manner. The Coast Guard has determined that in light of the existing regulations in place, such as the Naval Vessel Protection Zone in 33 CFR 165.2030, and the subject regulation, 33 CFR 165.1333, the Parade of Ships will not introduce extra or unusual hazards to the safety of life on the navigable waters of the United States such that a marine event permit would be required under 33 CFR 100.15. The commenter provided a discussion on the information required in a marine event permit application. As the discussion on what is required in a marine event permit does not relate to the proposed amendments to 33 CFR 165.1333, no further response is required.

Third, the commenter provided that proposed revisions to 33 CFR 165.1333 are actually due to previous Coast Guard errors instead of changing schedules, because it appears from prior correspondence with the Coast Guard that the Coast Guard may have mistakenly left out U.S. Navy vessels from the applicability of this zone. Naval Vessel

Protection Zones under 33 CFR 165.2030 apply to large U.S. Navy vessels, which have historically participated in the Parade of Ships. As stated in the NPRM for the regulatory change we proposed, the reason why this rule is being amended is due to last minute changes in the vessels participating in the Parade of Ships due to operational needs. Based on this comment, however, we have decided to make a change from our proposed amendment to § 165.1333. We are amending § 165.1333(a) to explain that the Coast Guard may use actual notice to enforce security zones around participating vessels not included in the notice, in situations when due to operational needs there is a change after the notice has been issued and the COTP needs to add a vessel to the list of designated participating vessels. In those situations the Coast Guard will also announce any such changes in the Local Notice to Mariners. The reference to actual notice reflects existing authorities and enforcement practices, but we hope that stating it in the Code of Federal Regulations will be helpful. The change is within the scope of the proposed rule, which envisioned using actual notice for security zones around all participating vessels.

The COTP does not designate large U.S. Navy vessels -- those more than 100 feet in length overall -- that participate in the parade as designated participating vessels because persons who violate the naval vessel protection zone around those vessels, which are issued under 14 U.S.C. 91 authority, are already subject to penalties under 33 U.S.C. 1232. Whether a large U.S. Navy vessels is in Parade of Ships or not, it will be surrounded by a naval vessel protection zone and persons should comply with the provisions of that regulation.

Fourth, the commenter provided that Broadcast Notice to Mariners before and during the event is insufficient notice. The proposed regulatory change provides that the

security zones will be enforced with actual notice which meets the standard set in 5 U.S.C. 552(a)(1). The Coast Guard considered the commenter's concerns about receiving Broadcast Notice to Mariners and, in response we revised the regulatory text to include an email and a phone number which members of the public can contact the Captain of the Port to receive an updated list of participating vessels. Furthermore, the Coast Guard actively conducts outreach to those participating in planned First Amendment activities related to the Parade of Ships so as to ensure the safety of all participants, and that participants of such activities are aware of all means to obtain the names of the vessels to which regulations apply.

Fifth, the commenter provided that an accurate list of vessels in the Parade of Ships is essential for vessel operators engaged in First Amendment activities. The Coast Guard concurs with this comment, but has pointed to the problem of last-minute changes making this objective difficult to achieve. Instead of eliminating the notice identifying participating vessels, as proposed, we will use actual notice to enforce security zones around vessels designated after the notice has been issued. In addition to actual notice, the Coast Guard will broadcast the names of the vessels to which the security zone applies using a Broadcast Notice to Mariners.

Sixth, the commenter provided that the Coast Guard's fear of free speech activities is irrational. The Coast Guard's rule amends the manner in which notice will be provided as to which vessels will have a security zone during the annual Parade of Ships during Fleet Week. The Coast Guard strives to ensure that free speech activities are respected and accommodated.

Seventh, the commenter provided that the Coast Guard should require an application for the maritime event, pursuant to 33 CFR 100.15, as it might allow for citizens to comment on the entire event in a meaningful way. The Coast Guard's position with respect to marine event permits can be found in the response to this commenter's second comment. Citizens may comment on the event in any way that is provided for under the protections of the First Amendment.

Eighth, the commenter provided that proposed revisions to 33 CFR 165.1333 expand restricted zones in Elliot Bay. The proposed amendment to 33 CFR 165.1333 did not expand the geographic size nor timeframe of the security zone.

After considering all the foregoing comments, the Coast Guard amended paragraph (a) of the regulatory text to maintain the notice while adding a provision providing for the Coast Guard to use actual notice for any vessels designated as participating vessels after the notice is issued. This maintains the notice but clarifies that we can address last minute changes to participating vessels because of operational needs. We also amended paragraph (e) to reflect additional methods of obtaining an up to date list of participating vessels, and we included both the date and times of the period that the regulation will be enforced, as opposed to just the date.

This rule amends the way in which the Coast Guard informs the public of the Seattle Seafair Fleet Week Parade. In order to provide notice to the public regarding the vessels requiring the security zones, the Coast Guard will continue to publish a notice in the **Federal Register** identifying designated participating vessels. We will also list in those notices the times, in addition to the dates, that the security zones will be enforced. We will use actual notice to make persons aware of changes to the notice identifying

designated participating vessels and we will identify all designated participating vessels, included those added late, in both Local Notice to Mariners and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that this rule only changes the means by which the public will be notified about the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending the way in which the Coast Guard will notify the public which vessels are designated participants in Seattle's Seafair Fleet Week. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.1333 by revising paragraphs (a) and (e) to read as follows:

§ 165.1333 Security Zones, Seattle's Seafair Fleet Week moving vessels, Puget Sound, WA.

(a) *Location.* The following areas are security zones: all navigable waters within 500 yards of each designated participating vessel in the Parade of Ships while each such vessel is in the Sector Puget Sound Captain of the Port (COTP) zone, as defined in 33 CFR 3.65-10, during a time specified in paragraph (e) of this section. The Coast Guard will publish a notice in the **Federal Register** each year before the start of the Seattle Seafair Fleet Week to identify the designated participating vessels for that year. Should information in the notice change after publication, as it may for operational reasons, the Coast Guard will use actual notice to enforce security zones around participating vessels not in the published notice. The Coast Guard will also provide this information in the Local Notice to Mariners.

* * * * *

(e) *Annual enforcement period.* The security zones described in paragraph (a) of this section will be enforced during Seattle Seafair Fleet Week each year for a period of up to 1 week. The Seattle Seafair Fleet Week will occur annually sometime between July 25 and August 14. The annual notice published in the **Federal Register** identifying the designated participating vessels will contain the dates and times that this section will be enforced. The Coast Guard will issue a Broadcast Notice to Mariners before the start of the Seattle Seafair Fleet Week to identify the designated participating vessels for that

year. In addition, members of the public may contact the Sector Puget Sound COTP at (206) 217-6002 for a list of participating vessels.

Dated: June 22, 2018.

M. M. Balding,

Captain, U.S. Coast Guard,

Acting Captain of the Port Puget Sound.

[FR Doc. 2018-13899 Filed: 6/27/2018 8:45 am; Publication Date: 6/28/2018]